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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. DERON HOLLINS, Defendant and Appellant.	G056032 (Super. Ct. No. 17CF2484) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James Edward Rogan, Judge. Affirmed.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson, Deputy Attorney General, for Plaintiff and Respondent.

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INTRODUCTION

Defendant Deron Hollins was convicted of two felonies based on his constructive possession of a firearm while being a convicted felon. We conclude substantial evidence supports the convictions, and therefore affirm the judgment.

Before trial, defendant filed a motion for disclosure of the personnel records of three of the arresting police officers, pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, 535 (*Pitchess*). The trial court granted the motion in part and denied it in part. Having reviewed the transcript of the court's in camera hearing regarding the personnel records, we conclude the court's order was well within its discretion, and we affirm that order as well.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On April 24, 2017, Santa Ana police officers Kenneth Gray and Anhtu Phan were separately on patrol in the area of Harbor Boulevard and Hazard Avenue. At about 2:45 a.m., both heard a single gunshot and saw a group of pedestrians running from the direction of the gunshot. One woman yelled, "they shot at him." When asked to identify "who shot at who[m]?" the woman replied "the white car" and pointed toward a white sedan in the intersection. Gray got out of his patrol car to speak to the driver of a white truck. The driver also told Gray the white sedan was involved in the shooting.

As the white sedan sped away, Gray and Phan pursued it in their patrol cars. Defendant was driving the white sedan; Keivon Keith Penn was in the front passenger seat. Defendant drove at a high rate of speed through residential neighborhoods. The sedan then turned onto Bewley Street, and pulled into a driveway at the end of a cul-de-sac. Gray saw a semiautomatic black handgun thrown out of the passenger side window. Later examination revealed that the hammer was charged, meaning the gun had recently been fired or was ready to fire.

Defendant and Penn refused to exit the car in response to the officers' commands. When defendant finally exited the white sedan, he was verbally aggressive and refused to comply with the officers.

A cartridge case recovered from the intersection where the shooting occurred was determined to have been shot from the same gun that was thrown out of the window of the white sedan.

The parties stipulated that before the date of the incident, defendant had been convicted of a felony offense that prohibited him from possessing a firearm.

Defendant was convicted of being a felon in possession of a firearm (Pen. Code, § 29800, subd. (a)(1)) and being a felon carrying a loaded firearm in a vehicle on a public street (*id.*, § 25850, subds. (a) & (c)(1)). (Further statutory references are to the Penal Code, unless otherwise noted.) Defendant pled guilty to misdemeanor resisting arrest. (§ 69.) Defendant admitted his prior serious and violent felony conviction (§§ 667, subds. (d) & (e)(1), 1170.12, subds. (b) & (c)(1)) and his prison prior (§ 667.5, subd. (b)).[1]

The trial court sentenced defendant to six years in prison: three years for being a felon in possession of a firearm, doubled due to the prior strike conviction. A sentence for being a felon carrying a loaded firearm in a vehicle on a public street was imposed but stayed pursuant to section 654. Defendant's 180-day sentence for resisting arrest was to be served concurrently with his prison sentence. Defendant's prison prior enhancement was struck for purposes of sentencing. Defendant appealed.

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[1] The jury acquitted defendant of shooting a firearm in a grossly negligent manner. (§ 246.3, subd. (a).)

DISCUSSION

I.

POSSESSION

Defendant contends that the evidence was insufficient to prove he possessed a firearm for purposes of criminal liability under sections 29800, subdivision (a)(1) and 25850, subdivisions (a) and (c)(1). "When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] . . . We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] A reviewing court neither reweighs evidence nor reevaluates a witness's credibility." (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.)

In this case, the prosecution sought to establish defendant constructively possessed the firearm. Constructive possession is established when, even though the defendant does not have physical possession of a firearm, he or she "knowingly exercises control or the right to control" it. (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 831.) Constructive possession of a firearm may be shown through circumstantial evidence and reasonable inferences drawn from the evidence. (*People v. Williams* (1971) 5 Cal.3d 211, 215.)

In *People v. Taylor* (1984) 151 Cal.App.3d 432, 434, the defendant, who was suspected of stealing a car, drove off in that car in a high speed pursuit with the police. During the pursuit, a gun was thrown out of the car's passenger window. (*Ibid.*) The appellate court rejected the defendant's argument that he had not possessed the gun.

(*Id.* at p. 436.) "The trial court was aware the gun was thrown from the passenger side of the car and Taylor was the driver. The court noted, however, the gun was thrown soon after the chase began and Taylor's driving represented an unequivocal attempt to avoid capture. A conviction may be supported by circumstantial evidence of constructive possession. The mere fact the evidence supports an inference Taylor did not personally possess the gun does not require reversal. [Citation.] There was sufficient evidence Taylor had constructive possession of the firearm." (*Ibid.*; see *People v. Garcia* (2008) 168 Cal.App.4th 261, 283 [resisting arrest is evidence of consciousness of guilt]; *People v. Jenkins* (1979) 91 Cal.App.3d 579, 584 ["inference of dominion and control is easily made when the contraband is discovered in a place over which the defendant has general dominion and control [such as] his automobile"]; *People v. Gant* (1968) 264 Cal.App.2d 420, 425 [attempt to avoid police by speeding indicated driver's guilty knowledge of presence of stolen firearm located "under the dash to the right of the glove compartment"].)

Defendant argues that while a driver may have constructive possession of a gun found under the front seat of his or her vehicle (*People v. Nieto* (1966) 247 Cal.App.2d 364, 368), he or she does not have constructive possession of a gun thrown out of the vehicle by a passenger. Defendant's argument is directly refuted by this court's opinion in *People v. Taylor*.[2]

Defendant also argues the circumstantial evidence of his fleeing the scene of the shooting does not support a finding of constructive possession. Defendant suggests that he could have been fleeing the scene because he "did not want to even be in the mere presence of a firearm because he was a convicted felon," or because he was "driving

[2] Defendant suggests *People v. Taylor* was wrongly decided and invites us not to follow it. We decline to do so.

under the influence . . . and did not want to be questioned by the police."[3] The first argument assumes knowledge of and the right to control the firearm; the second was made to the jury, which rejected it.

II.

PITCHESS MOTION[4]

On a showing of good cause, a criminal defendant is entitled to discovery of relevant documents or information contained within the confidential personnel records of peace officers accused of misconduct against the defendant. (*Pitchess*, *supra*, 11 Cal.3d at p. 535.) The trial court must review the requested records in camera to determine what information, if any, should be disclosed. (*Chambers v. Superior Court* (2007) 42 Cal.4th 673, 679.) A request for discovery of the peace officers' personnel records is committed to the discretion of the trial court; we review only to determine whether the trial court abused its discretion. (*Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1039.)

In the trial court, defendant requested disclosure of the personnel files of three police officers—Gray, Phan, and J. Collins.[5] The court granted the motion in part and denied it in part, and held an in camera hearing. The Santa Ana Police Department's custodian of records provided the personnel files for the three named officers. The trial court reviewed the personnel records of the three officers in camera, and ultimately

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[3] On cross-examination, Gray testified he suspected defendant might be under the influence of drugs or alcohol because of the irrational manner in which he was behaving.

[4] In *Pitchess, supra,* 11 Cal.3d at page 535, the California Supreme Court held that a criminal defendant has a right to limited discovery of the personnel records of peace officers in order to ensure "a fair trial and an intelligent defense in light of all relevant and reasonably accessible information." The Legislature later codified the privileges and procedures of such so-called *Pitchess* motions. (§§ 832.7, 832.8; Evid. Code, §§ 1043-1045.)

[5] Collins was involved in defendant's arrest.

ordered discovery of the name and address of one complainant, as well as information regarding the police officers' previous employment.

The parties agree that this court should conduct an independent review of the sealed transcript of the in camera hearing to determine whether the trial court abused its discretion in denying defendant's motion for disclosure of the officers' personnel records, other than as specified *ante*. (See *People v. Prince* (2007) 40 Cal.4th 1179, 1285 [reviewing courts "routinely independently examine[] the sealed records of . . . in camera hearings to determine whether the trial court abused its discretion in denying a defendant's motion for disclosure of police personnel records"].)

We have reviewed the sealed transcript of the trial court's in camera hearing. The custodian of records described the records being produced and how they were maintained, and the court questioned the custodian about the records. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1229 [the trial court is not required to place a photocopy of the documents produced by the custodian of records in a confidential file, but may state for the record what documents it examined in camera].) The record shows the trial court confirmed that, with the exception of the single matter for which the name and address of the complainant against Gray were provided, and their previous employment information, the officers' personnel files did not contain discoverable information. Consequently, the trial court did not abuse its discretion in ruling there was no discoverable information other than that provided to defendant and his trial counsel. The trial court did not abuse its discretion by partially denying the *Pitchess* motion.

DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.

BEDSWORTH, Acting P.J., Concurring:

I have signed the majority opinion under the compulsion of *People v. Myles* (2012) 53 Cal.4th 1181, *People v. Mooc* (2001) 26 Cal.4th 1216, 1229, and *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450. As presently expressed, California law seems to provide appellate review not of the *merits* of an in camera *Pitchess* hearing (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531), but only of the *procedures* followed. We have reviewed those procedures in this case and they are unobjectionable, so the majority opinion is correct.

But I don't think it's right. I cannot understand why this one area of criminal law provides for no meaningful review of the trial court's decision *on the merits*. It is beyond my ken that we provide appellate review of every other trial court decision, but choose not to provide it on this important issue of criminal discovery.

People v. Myles, supra, 53 Cal.4th at p. 1209, says, "The sealed transcript that is before us, in which the court 'state[d] for the record what documents it examined,' is adequate for purposes of conducting a meaningful appellate review." Under that interpretation of applicable precedent, the trial court does exactly what it did here: opens the file, recites its contents, tells us it finds nothing discoverable, and denies disclosure. We then receive a transcript that tells us "what documents [the court] examined." I am unable to understand how we can provide meaningful review under those circumstances.

There is simply no way to evaluate the trial court's decision on such a record. There could well be a complaint or a report we would consider discoverable. There could well be a dozen. We simply have no way of knowing. If we do not have copies of the documents in question, we cannot say whether the trial court has correctly assessed their import.

And I am unable to perceive why providing copies of those documents

presents a problem. It seems to me the trial court could easily order copies made of the documents it has reviewed and seal them. We could then review those copies and determine whether the trial court correctly exercised its discretion.

I don't mean to suggest in any way that I distrust the trial court's review in this case – or in cases in general. I spend a great deal of my time marveling at the ability of our trial bench to make a correct call in five minutes on issues I struggle with for five days. But recognizing the competence and bona fides of our trial bench and giving them broad discretion is a far cry from instituting a system in which they are the last word on a question. And since I don't find such final authority in other areas of the law, I question its wisdom here.

But I am at a loss to interpret *Mooc* and *Myles* in any other way. *People v. Mooc*, the foundation of the *Myles* language to which I take exception, was a case in which the appellate court, frustrated by its inability to conduct a meaningful *Pitchess* review without the documents in question, ordered the entirety of the officer's personnel files provided. The Supreme Court correctly noted that order did not cure the problem because the trial court had not indicated what files it reviewed, so there was no way to know what documents in the complete file had been before it during its *Pitchess* hearing. But, since it now had the officer's entire personnel file before it, it reviewed the file and ruled on the motion itself, rather than delay the case any further.

In doing so, the court recognized the availability of a procedure whereby the trial court "can photocopy [the documents it reviewed] and place them in a confidential file," (*People v. Mooc, supra*, 26 Cal.4th at p. 1229) but went on to say, "Alternatively, the court can prepare a list of the documents it considered, or simply state for the record what documents it examined." (*Ibid.*) That is what the trial court did in this case, so I must sign the opinion. Usually, when I come up against a result I find inexplicable, I go back over my work looking for the mistake that led me to that result. Usually I find it. But I can't find it here. There are cases I can distinguish. In *People v.*

Prince (2007) 40 Cal.4th 1179, 1285-1286, for example, the court approved the procedure here, but did so in a case in which the record included "a full transcript of both segments of the in camera hearing and the documents that formed the basis for the court's conclusion that defendant was not entitled to the complaints that had been filed against [the officer]." (*Ibid*.) And I can find cases where the issue was considered only in passing, or in which the rule was stated without discussion. But I cannot find anything on which I could hang a dissent.

I can only do what I do here: Articulate my concern that our review of in camera *Pitchess* hearings does not go far enough, urge trial courts to include copies of the documents reviewed, as suggested in *Mooc*, and express my hope the Supreme Court will either correct our misunderstanding of the state of the law or reconsider its position.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.